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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,
et al.,

Plaintiffs,

V.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.,

Defendants.

Case No. 3:25-cv-03698-SI

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
PROTECTIVE ORDER AND ORDER
QUASHING PLAINTIFFS' FIRST SET OF
REQUESTS FOR THE PRODUCTION OF
DOCUMENTS**

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INTRODUCTION

Discovery is open in this case, and Defendants (hereinafter “the Government”) have given this Court no valid reason to relieve it of the obligation to respond to Plaintiffs’ Requests for Production Nos. 1 to 3 pending resolution of a motion to dismiss. ECF 210. The Government’s motion seeks to avoid, yet again, revealing the unlawful actions the Government has already taken and is poised to imminently take, and will have drastic impacts on federal agencies, their employees, and all those who rely on their services. This motion is premised on misconstructions of Plaintiffs’ claims and the U.S. Supreme Court’s July 9, 2025 stay order that this Court has already rejected (ECF 214), as well as other similarly meritless arguments. And documents sought in these Requests would also be part of the administrative record that is imminently due on July 28, 2025 anyway. The Government should be required to respond to Requests for Production Nos. 1 to 3 for similar reasons that the Court ordered production of Agency RIF and Reorganization Plans (“ARRPs”). ECF 214. Communications between Federal Agency Defendants and OMB, OPM, and DOGE about ARRPs, as well as requests for waivers of statutorily mandated RIF periods and responses to such requests, are plainly relevant to both Plaintiffs’ Administrative Procedure Act (“APA”) and ultra vires claims. The Court should deny the Government’s motion.

BACKGROUND

The Supreme Court’s July 9 stay decision expressly left this Court to decide in the first instance the lawfulness of ARRPs produced or approved pursuant to the challenged Executive Order and OMB/OPM Memorandum. *Trump v. AFGE*, No. 24A1174, 2025 WL 1873449, at *1 (U.S. July 8, 2025). Plaintiffs immediately requested that the Court confirm its prior expedited discovery order requiring production of the ARRPs submitted to or approved by OMB and OPM. ECF 176; ECF 85 at 40–41; ECF 92 (staying production deadline); ECF 109 (granting partial reconsideration and ordering partial *in camera* production). That prior order had required production of the ARRPs submitted by Federal Agency Defendants or approved by OMB or OPM, and related requests for and approvals of reduction in force (“RIF”) notice period waivers.¹ The

¹ Evidence submitted at the preliminary injunction stage demonstrated that in those RIF notice

1 Court ordered the Government to file a response by July 14, noting that “The content of the
 2 ARRPs … remains squarely at issue in this case.” ECF 177. The Government filed a lengthy
 3 opposition, arguing that the Court should halt all discovery pending a forthcoming motion to
 4 dismiss, revisiting the Court’s jurisdiction, and generally construing the Supreme Court’s stay
 5 order to end the case. ECF 208. Plaintiffs responded to these new arguments on July 16. ECF 213.

6 Meanwhile, pursuant to the Court’s initial scheduling order, the parties were to complete
 7 their Rule 26(f) conference by no later than July 11, 2025, which would open discovery pursuant to
 8 Rule 26(d)(1). On July 10, Plaintiffs provided the Government with advance notice of three
 9 requests for production of documents under Rule 34. ECF 178-1 ¶2.

10 Request No. 1 seeks production of communications between any Federal Agency
 11 Defendants and OMB, OPM, or DOGE about ARRPs. ECF 178-1 at 8. Request Nos. 2 and 3 seek
 12 production of Federal Agency Defendants’ applications for waivers of statutorily mandated RIF
 13 notice periods and responses by OMB or OPM to such requests. *Id.*²

14 The requests were deemed served on July 11, 2025, as of the parties’ Rule 26(f) conference.
 15 *Id.* ¶4; Fed. R. Civ. P. 26(d)(2)(B). In light of the exigent circumstances, including the
 16 Government’s imminent plans to implement ARRPs in numerous federal agencies in the wake of
 17 the Supreme Court’s stay of this Court’s prior injunction, Plaintiffs moved on July 11 for an order
 18 shortening the Government’s time to respond to Request No. 1. ECF 178. The same day, the
 19 Court ordered the Government to respond to Plaintiffs’ motion by July 15 and, in its response, to
 20 identify any categorical objections to the production of documents responsive to Request No. 1.
 21 ECF 207.

22 On July 15, the Government opposed Plaintiffs’ motion, ECF 211, and simultaneously filed
 23 its own motion for a protective order and to quash all three Requests for Production, ECF 210.

24 waiver requests and OPM responses agencies were referencing administration decisions regarding
 25 elimination of programs and offices and the Executive Order at issue in this case. *Infra* Section IV.

26 ² This Court previously ordered production of those waiver requests and responses, ECF 85 at
 27 40, but the subsequent briefing and orders on the Government’s protective order and reconsideration
 28 request did not address this aspect of the Court’s order. Plaintiffs thus included these document
 requests in an abundance of caution, in the event this Court did not reconfirm that aspect of the
 expedited order.

That motion repeated many of the points made by the Government in its objection to production of the ARRPs (ECF 208).

On July 18, the Court resolved the pending dispute regarding production of the ARRPs and the Government’s request for reconsideration and a protective order, including claims of deliberative process privilege. ECF 214. The Court specifically rejected the Government’s contentions that the Supreme Court’s stay order “effectively ends this case” (ECF 214 at 4, quoting ECF 208 at 1): “This Court disagrees with defendants’ reading.” *Id.* The Court also rejected the Government’s position that expedited discovery is inappropriate with respect to APA claims to be reviewed on an administrative record. *Id.* at 6. Thus, the Court concluded that ARRPs are “plainly relevant” to Plaintiffs’ claims and went on to hold that even if the deliberative process privilege were to apply, the qualified privilege is overcome by the “need for accurate fact-finding.” *Id.* at 4–8. The Court ordered the Government to produce the ARRPs of the Federal Agency Defendants that were submitted to and/or approved by OPM/OMB, and also granted the Government’s request for a protective order in part, providing that the production would be for *in camera* review and counsel’s eyes only. ECF 214 at 10–11.³

LEGAL STANDARD

“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case....” Fed. R. Civ. P. 26(b)(1). Discovery is “accorded a broad and liberal treatment,” *Peng v. NorthWestern Mut. Life Ins. Co.*, No. 17-CV-01760, 2017 WL 3007030, at *1 (N.D. Cal. July 14, 2017) (Illston, J.) (quotation omitted), and the “requirement of relevancy should be construed liberally and with common sense,” *Neonode Smartphone LLC v. Apple, Inc.*, No. 21-CV-08872, 2022 WL 1285429, at *1 (N.D. Cal. Apr. 29, 2022) (quotation omitted).

Courts may grant protective orders under Rule 26(c), which provides that “[a] party ...

³ The Court also granted Plaintiffs' request to enforce its prior order requiring the Government to identify the 40 RIFs at 17 agencies that it represented to both the Supreme Court and Ninth Circuit had been halted by this Court's injunction, rejecting the Government's arguments that it should not have to disclose that information. ECF 214 at 9–10.

1 from whom discovery is sought may move for a protective order ... for good cause ... to protect a
 2 party or person from annoyance, embarrassment, oppression, or undue burden or expense.” “Rule
 3 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate
 4 and what degree of protection is required.” *Robinson v. Chefs’ Warehouse*, No. 3:15-CV-05421-
 5 RS(KAW), 2017 WL 836944, at *1 (N.D. Cal. Mar. 3, 2017) (quoting *Seattle Times Co. v.*
 6 *Rhinehart*, 467 U.S. 20, 36 (1984)). The Federal Rules also allow for motions to quash a subpoena
 7 (which the Rule 34 requests at issue are not). Fed. R. Civ. P. 45(d)(3).

8 ARGUMENT

9 The Government has not justified a protective order.⁴ The Government’s primary
 10 arguments rely on misconstruing the Supreme Court’s stay decision and the nature of Plaintiffs’
 11 claims, which this Court has already rejected in its order requiring expedited production of the
 12 ARRPs. ECF 214. Plaintiffs address in turn why each of the Government’s arguments for a
 13 protective order lacks merit.

14 I. The Government’s plan to move for dismissal does not justify a protective order.

15 A. Discovery is open, and a motion to dismiss does not stay discovery.

16 The Government argues that it should not have to respond to these Requests until the Court
 17 resolves its motion to dismiss, essentially seeking a stay of discovery. ECF 210 at 5. Neither the
 18 Federal Rules nor local rules stay discovery pending such motions. And in this case, the
 19 Government’s just-filed motion to dismiss is not likely to dispose of this case, nor to significantly
 20 narrow it. The Government’s swift and ongoing action to implement the ARRPs warrants
 21 expedited discovery—not a pause of discovery.

22 A party may seek discovery once the parties have conferred under Rule 26(f), which
 23 happened on July 11, regardless of whether a defendant moves to dismiss. See Fed. R. Civ. P.
 24

25 ⁴ The Government’s motion to quash should be disregarded because there is no subpoena
 26 involved. See Fed. R. Civ. P. 45(d)(3); *Dunlap v. Alaska Radiology Assocs., Inc.*, No. 3:14-CV-
 27 00143-TMB, 2018 WL 11462402, at *6 n.52 (D. Alaska Nov. 5, 2018) (“[A] Motion to Quash is
 28 referenced only in Fed. R. Civ. P. 45(d)(3) in relation to the procedure for subpoenas....[T]he
 standard discussed here is the standard for a protective order, as no subpoena is at issue such that the
 standard for quashal would be relevant.”).

1 26(d)(1); ECF 178-1 ¶4. “Had the Federal Rules contemplated that a motion to dismiss under Fed.
 2 R. Civ. Pro. 12(b)(6) would stay discovery, the Rules would contain a provision to that effect. In
 3 fact, such a notion is directly at odds with the need for expeditious resolution of litigation.” *Gray*
 4 *v. First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990). The Government asserts that the
 5 courts “ordinarily” stay discovery pending a motion to dismiss, but the case they cite, ECF 210 at
 6 5, says the opposite: “The Federal Rules of Civil Procedure do not provide for automatic or blanket
 7 stays of discovery when a potentially dispositive motion is pending. Indeed, district courts look
 8 unfavorably upon such blanket stays of discovery.” *Hewlett Packard Enter. Co. v. Inspur Grp.*
 9 *Co.*, No. 24-CV-02220-JST, 2024 WL 4631665, at *1 (N.D. Cal. Oct. 29, 2024) (cleaned up). A
 10 party seeking a stay of discovery has a “heavy burden to make a strong showing to justify the
 11 stay.” *Lofton v. Bank of Am. Corp.*, No. C 07-05892, 2008 WL 2037606, at *1 (N.D. Cal. May 12,
 12 2008) (Illston, J.) (cleaned up) (denying stay pending motion to dismiss). The Government has not
 13 made the necessary showing to depart from the ordinary practice of proceeding with discovery
 14 pending a motion to dismiss.

15 **B. The Government’s argument for staying discovery mischaracterizes the effect**
 16 **of the Supreme Court stay as well as Plaintiffs’ claims.**

17 In seeking what is essentially a stay of discovery, the Government argues that its just-filed
 18 motion to dismiss will be dispositive of the entire case, relying on its mischaracterization of the
 19 Supreme Court’s stay order and Plaintiffs’ claims that this Court has already rejected. ECF 214.⁵
 20 Plaintiffs briefly recap the problems with the Government’s position.

21 As an initial matter, the Supreme Court’s stay decision “is not a ruling on the merits.”
 22 *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Kavanaugh, J., concurring). A Supreme Court stay

23

24 ⁵ The Government’s motion foreshadows the arguments in its motion to dismiss, and Plaintiffs
 25 respond briefly to those arguments as they pertain to this discovery dispute. However, the
 26 Government has only just filed its motion to dismiss, and Plaintiffs have had no opportunity to
 27 respond in full. Although evaluating a motion to stay discovery pending a motion to dismiss requires
 28 the Court to take a “preliminary peek” at the arguments for dismissal, *Tavantzis v. Am. Airlines, Inc.*,
 No. 23-CV-05607-BLF, 2024 WL 812012, at *2 (N.D. Cal. Feb. 23, 2024), the Court should
 recognize that the Government’s motion essentially seeks a premature judgment on its motion to
 dismiss without a fair opportunity for Plaintiffs to respond.

1 decision determines only the “interim status of the law” during the “time it takes for the litigation
 2 process to run its course and reach a final merits ruling in the district court, court of appeals, and
 3 potentially th[e Supreme] Court.” *Labrador v. Poe*, 144 S. Ct. 921, 928–29 (2024) (Kavanaugh, J.,
 4 concurring). A stay does not foreclose lower courts from exercising their obligation to carefully
 5 analyze and rule on the law and facts, which can require full discovery of the facts in a way that
 6 was not possible at the preliminary injunction stage. Here, in particular, “[s]ince the Supreme
 7 Court included no explanation of its conclusion, this Court cannot say whether the Supreme Court
 8 determined the claims underlying the preliminary injunction fail as a matter of law or if the
 9 evidentiary record has not yet sufficiently developed to support the claims.” ECF 214 at 4 n.3.
 10 The full course of merits litigation may ultimately result in a decision contrary to an initial stay
 11 decision, which shows that a stay does not necessarily entail dismissal. *See, e.g., Sierra Club v.*
 12 *Trump*, 963 F.3d 874, 887 (9th Cir. 2020) (concluding that Sierra Club had available causes of
 13 actions despite Supreme Court emergency stay order suggesting otherwise), *vacated and remanded*
 14 *on other grounds sub nom. Biden v. Sierra Club*, 142 S. Ct. 46 (2021); *Allen v. Milligan*, 599 U.S.
 15 1, 17 (2023) (affirming on the merits after the Court previously stayed an injunction); *Biden v.*
 16 *Texas*, 597 U.S. 785, 794–95, 814 (2022) (denying a stay but subsequently reversing the same
 17 judgment and injunction).

18 A further reason why the Supreme Court’s stay decision does not “end” this case is because
 19 neither this Court’s preliminary injunction nor the Supreme Court’s stay decision addressed all of
 20 Plaintiffs’ claims. The Supreme Court stated expressly that its stay decision was limited to
 21 assessing the likely success of Plaintiffs’ challenges to the legality of the Executive Order and the
 22 OPM/OMB Memorandum. *Trump v. AFGE*, No. 24A1174, 2025 WL 1873449, at *1 (U.S. July 8,
 23 2025). The Supreme Court “express[ed] no view on the legality of any Agency RIF and
 24 Reorganization Plan produced or approved pursuant to the Executive Order and Memorandum,”
 25 and recognized that “[t]hose plans are not before this Court.” *Id.*; *see also id.* (Sotomayor, J.,
 26 concurring) (stay decision “leaves the District Court free to consider those questions [about the
 27 legality of the plans] in the first instance”); ECF 177 at 2 (“The content of the ARRPs thus remains
 28 squarely at issue in this case.”); ECF 214 at 5 (“To argue otherwise is to ignore the allegations of

1 the operative complaint”; discussing “just one clear-cut example”).

2 The Government argues that *all* of Plaintiffs’ claims “depend on the mistaken view that the
 3 Workforce Executive Order, the Workforce Memorandum, or both are unlawful.” ECF 210 at 5.
 4 But as this Court concluded, that argument mischaracterizes the nature of Plaintiffs’ claims by
 5 ignoring significant parts of the operative complaint. ECF 214 at 4–5.

6 Plaintiffs’ ultra vires and APA claims against OMB, OPM, and DOGE are not limited to
 7 challenging the OMB/OPM Memorandum. Plaintiffs challenge all actions and orders of OMB,
 8 OPM, and DOGE to implement the Executive Order, “including but not limited to” the
 9 Memorandum, “as well as any direction, approval, or requirement imposed with respect to any
 10 ARRPs that result from that Executive Order.” ECF 100 ¶396; *see also id.* ¶¶404, 411. That
 11 includes “any decision ‘approving’ an ARRP, and DOGE’s directives ordering agencies to make
 12 staffing and spending cuts.” *Id.* ¶405; *see also id.* ¶¶395, 403, 410, 416–18. While the
 13 Memorandum sets up the process and requirements for the content of ARRPs, OMB, OPM, and
 14 DOGE have taken actions beyond the Memorandum itself by approving or disapproving ARRPs
 15 and ordering specific staffing and spending cuts.⁶ The Supreme Court’s stay order does not even
 16 arguably address the legality or scope of authority for OMB, OPM, and DOGE’s decisions and
 17 directives with respect to implementing workforce reduction or reorganization at any agency.

18 Further, Plaintiffs’ claims against the Federal Agency Defendants challenging the
 19 lawfulness of implementation actions, including through RIFs and other reorganization steps, do
 20 not all rely on the lawfulness of the Executive Order or the Memorandum. ECF 100 ¶¶422, 429,

21
 22 ⁶ Even without access to discovery materials, Plaintiffs have submitted record evidence of
 23 unlawful directives aside from the Memorandum itself. *See* ECF 37-1 at 38-41 (describing OMB
 24 response rejecting NLRB’s ARRP and requiring larger cuts); ECF 96-1 ¶15 (reporting that NSF
 25 management informed employees that RIF of Division of Equity for Excellence in STEM resulted
 26 from “following orders from OPM, OMB, and DOGE”); ECF 37-1 at 4–5 (HHS Secretary
 27 Kennedy statements re: DOGE-ordered cuts); *id.* (VA Secretary: OPM provided VA with “target”
 28 cut of 80K positions). The Government’s declarations in response to this Court’s order requiring
 further information regarding approvals of ARRPs by OMB and OPM (ECF 139 at 2) further
 support Plaintiffs’ contentions that OMB and OPM are taking action to approve ARRPs. Far from
 being sure to be dismissed, as the Government claims, Plaintiffs have pleaded plausible claims and
 already presented factual evidence that supports further factual development.

1 431. The Government is also wrong in contending that “Plaintiffs do not challenge any particular
 2 ARRP as unlawful on its own terms,” ECF 210 at 6, as this Court recognized. *See* ECF 214. The
 3 operative complaint pleads that the Federal Agency Defendants’ actions are arbitrary and
 4 capricious because, among other reasons, they “disregard their authorizing statutes, … engage in
 5 large-scale RIFs that are necessarily contrary to agency’s ability to maintain required function and
 6 authorizing statute, [and] abandon reasoned decision-making considering all relevant factors.”
 7 ECF 100 ¶431. And Plaintiffs’ TRO and preliminary injunction briefing similarly argued that the
 8 Federal Agency Defendants’ implementation of the Executive Order was unlawful, including
 9 because, on the existing record, agencies were acting in an arbitrary and capricious manner by,
 10 among other things, abolishing offices, programs, and functions that they had previously deemed
 11 necessary and important without reasoned explanation. ECF 37-1 at 43; *see also, e.g.*, ECF 70 at 9.
 12 Those claims are not derivative of Plaintiffs’ facial challenges to the Executive Order and
 13 Memorandum and are unaffected by the Supreme Court’s stay decision. *See* ECF 214 at 5–6
 14 (recognizing, as “just one clear-cut example,” the continued viability of one of Plaintiffs’ claims
 15 against Federal Agency Defendants).

16 Plaintiffs are entitled to discovery on these claims, which are independent of the facial
 17 legality of the Executive Order and Memorandum, and the Government may not resist judicial
 18 review by maintaining secrecy over its decisions and seeking threshold dismissal. ECF 214 at 6
 19 (“The Court will not countenance” that the Government “could withhold relevant discovery on the
 20 grounds that the plaintiff had not yet proven his or her case.”).

21 **C. The Supreme Court’s stay does not undermine this Court’s jurisdiction.**

22 The Government is also wrong in arguing that the Supreme Court’s stay decision somehow
 23 undermines this Court’s jurisdiction. ECF 210 at 7 n.2. The Supreme Court’s brief explanation of
 24 its reason for granting a stay said nothing about whether the CSRA and FSLMRS precludes district
 25 court jurisdiction. *Trump v. AFGE*, 2025 WL 1873449, at *1. As Justice Sotomayor stated, that
 26 decision “leaves the District Court free to consider those questions” regarding the legality of the
 27 ARRPs “in the first instance.” *Id.* This Court should reject the Government’s suggestion to
 28 preemptively foreclose discovery because the Government intends to take another run at

1 administrative channeling in its motion to dismiss. ECF 210 at 16–17.

2 First, both this Court and the Ninth Circuit have already confirmed that this Court has
 3 jurisdiction. ECF 124 at 18–26; ECF 85 at 18–24; *AFGE v. Trump*, 139 F.4th 1020, 1030–33 (9th
 4 Cir. 2025).

5 Second, the Government’s channeling argument is premised on an overly narrow view of
 6 Plaintiffs’ claims, ignoring both the preliminary nature of the Supreme Court’s stay decision and
 7 that Plaintiffs’ ultra vires and APA challenges to OMB, OPM and DOGE directives and approvals
 8 (which as discussed *supra*, were not before the Supreme Court) cannot be heard by the Merits
 9 Systems Protection Board (“MSPB”) or Federal Labor Relations Agency (“FLRA”) and are not
 10 channeled for the reasons previously explained by this Court and the Ninth Circuit. ECF 124 at
 11 18–26; *AFGE v. Trump*, 139 F.4th at 1030–33; *see also AFGE v. OPM*, 2025 WL 914823, at *1
 12 (9th Cir. Mar. 26, 2025) (non-profit organization claims against OPM not likely channeled).

13 Third, Plaintiffs’ APA claims against Federal Agency Defendants arising from arbitrary and
 14 capricious and otherwise unlawful actions implementing the ARRPs are outside the scope of
 15 administrative adjudication for reasons previously explained by Plaintiffs. *See* ECF 101-1 at 17–
 16 21; ECF 70 at 9–12; ECF 37-1 at 46–48. In particular, Plaintiffs challenge agency actions to
 17 reorganize and RIF that result from unlawful OMB, OPM, and DOGE directives, violations of
 18 statutory obligation and authority, and arbitrary and capricious decision-making. Those claims
 19 belong in federal court, under the APA “command” of judicial review. *Dep’t of Commerce v. New*
 20 *York*, 588 U.S. 752, 771–72 (2019); *see* ECF 70 at 10–11.

21 Further, even if this case were directed only at the decisions to RIF (which it is not), this
 22 Court has also already rejected the argument that challenges to decisions resulting in RIFs are
 23 likely channeled. ECF 124 at 25 n. 14 (“when the question is about what Congress intended, it
 24 matters that Congress chose not to provide an administrative path to RIF challenges themselves”).

25 Plaintiffs will further address in the forthcoming response to the motion to dismiss why this
 26 Court and the Ninth Circuit’s prior analyses foreclose the Government’s attempt to revisit the issue
 27 of jurisdiction. For present purposes, the Government’s desire to reargue jurisdiction gives this
 28 Court no basis to delay discovery.

1 **D. Discovery should be expedited, not stayed.**

2 Expedited discovery—not a stay of discovery—is warranted because Plaintiffs have
 3 established impending harm from imminent government actions. The Government represented to
 4 the Ninth Circuit and Supreme Court that it intends to implement ARRPs imminently through RIFs
 5 and reorganization actions. Stay Application at 32, *Trump v. AFGE*, No. 24A1174 (U.S. June 2,
 6 2025) (stating that the Court’s preliminary injunction halting implementation of the ARRPs had
 7 “concretely” imposed “immediate consequences” on the Government because “40 RIFs in 17
 8 agencies” “affecting thousands of federal employees” had been “in progress”); Opening Brief at
 9 45, *AFGE v. Trump*, No. 25-3293 (9th Cir. June 20, 2025), Dkt. 12.1 (“[m]ultiple RIFs were set to
 10 be noticed within the month following entry of the injunction, and dozens were set to occur during
 11 that period,” and the “[t]he injunction halts those processes in their tracks”). Indeed, following the
 12 Supreme Court’s stay decision, more than 1,300 State Department employees received RIF notices
 13 and were immediately placed on administrative leave on Friday, July 12, directly harming federal
 14 employees, Plaintiff unions, and threatening the agency’s ability to respond to foreign threats.⁷
 15 The Department of Health and Human Services similarly executed RIFs of thousands of
 16 employees,⁸ and the EPA has announced it will eliminate the entire Office of Research and
 17 Development.⁹

18 Rather than relieving the Government of discovery obligations, the Court should allow
 19 Plaintiffs’ request for expedited discovery.

20
 21

⁷ See, e.g., Hannah Natanson et al., *State Department Cuts China Policy Staff Amid Major Overhaul*, Wash. Post (July 14, 2025), <https://www.washingtonpost.com/national-security/2025/07/14/state-department-rubio-firings-china/>; Michael Crowley et al., *State Dept. Layoffs Hit Russia and Ukraine Analysts*, N.Y. Times (July 15, 2025), <https://www.nytimes.com/2025/07/15/us/politics/state-department-layoffs-russia-ukraine.html>.

22
 23 ⁸ See, e.g., Christina Jewett & Benjamin Mueller, *H.H.S. Finalizes Thousands of Layoffs After Supreme Court Decision*, N.Y. Times (Jul. 15, 2025), <https://www.nytimes.com/2025/07/15/us/politics/hhs-layoffs.html>

24
 25 ⁹ See, e.g., Lisa Friedman & Maxine Joselow, *E.P.A. Says It Will Eliminate Its Scientific Research Arm*, N.Y. Times (July 18, 2025), <https://www.nytimes.com/2025/07/18/climate/epa-firings-scientific-research.html>; ECF 37-19 ¶¶17-18 (describing harms of cuts to ORD); ECF 101-8 ¶¶18-27 (same).

1 **II. The APA does not foreclose discovery.**

2 For the reasons explained in Section I *supra*, the Government is wrong that the only
 3 “plausibly” remaining claims are under the APA. ECF 210 at 8. Discovery is open with respect to
 4 Plaintiffs’ ultra vires claims, including those challenging OMB, OPM, and DOGE approvals and
 5 directives to agencies that the Supreme Court did not address.

6 Even as to the APA claims, Plaintiffs’ requests for production are appropriate. The
 7 Government has insisted on keeping its decisions and actions secret and argued that Plaintiffs are
 8 thus precluded from bringing their challenges. ECF 210 at 10. But the information Plaintiffs seek
 9 would be part of a complete administrative record—which is set to be produced imminently (by
 10 July 28, 2025, Civil L.R. 16-5; ECF 25)—and, were the Government to fail to include it, would
 11 properly be the subject of supplementation or extra-record discovery. An administrative record
 12 must contain all information that decisionmakers “directly or indirectly” considered. *Thompson v.*
 13 *U.S. Dep’t of Lab.*, 885 F.2d 551, 555 (9th Cir. 1989). It is within the court’s inherent case
 14 management authority, *Dietz v. Bouldin*, 579 U.S. 40, 45 (2016), to order accelerated production of
 15 certain parts of the administrative record.

16 Beyond that, extra-record discovery is allowed in certain circumstances, including when
 17 “necessary to determine whether the agency has considered all relevant factors and has explained
 18 its decision,” and where “the agency has relied on documents not in the record.” *Cachil Dehe*
 19 *Band of Wintun Indians of Colusa Indian Cnty. v. Zinke*, 889 F.3d 584, 600 (9th Cir. 2018)
 20 (quoting *Sw. Ctr. for Biological Diversity v. U.S. Forest Serv.*, 100 F.3d 1443, 1451 (9th Cir.
 21 1996)); ECF 214 at 6.

22 In addition, in APA cases, a “district court is free to exercise its discretion to permit...
 23 discovery to ascertain the contours of the precise policy at issue.” *Hisp. Affs. Project v. Acosta*,
 24 901 F.3d 378, 388 (D.C. Cir. 2018) (cleaned up); *see also Doe 1 v. Nielsen*, No. 18-CV-02349-
 25 BLF(VKD), 2018 WL 4266870, at *2 (N.D. Cal. Sept. 7, 2018) (“[T]he Court finds that discovery
 26 of the nature of the agency action issue is necessary in order for the parties and the Court to
 27 determine the scope of the administrative record to be produced”). This is particularly warranted in
 28 a case like here where, “unlike the typical APA case, which involves the enactment of a rule or

1 other agency action taken in public view—only the Defendants know the ‘contours’ of those
 2 actions.” *All. for Retired Americans v. Bessent*, No. CV 25-0313 (CKK), 2025 WL 1114350, at *3
 3 (D.D.C. Mar. 20, 2025).

4 Plaintiffs explain in the following sections why each Request seeks material that is not only
 5 relevant to their ultra vires claims, but that Plaintiffs may also obtain to support their APA claims.¹⁰

6 **III. The Government provides no valid reason to avoid Request No. 1.**

7 **A. The requested communications are relevant.**

8 Plaintiffs’ request for communications discussing ARRPs between Federal Agency
 9 Defendants and OMB, OPM, and/or DOGE seeks documents that are plainly relevant to this case.
 10 The “requirement of relevancy should be construed liberally and with common sense,” *Neonode*
 11 *Smartphone LLC*, 2022 WL 1285429, at *1, and the relevance standard is a “low bar.” *Pizzuto v.*
 12 *Tewalt*, 136 F.4th 855, 868 (9th Cir. 2025).

13 As explained in Plaintiffs’ briefing on disclosure of the ARRPs themselves, Plaintiffs’ ultra
 14 vires and APA claims against OMB, OPM, and DOGE challenge not only the Memorandum but
 15 also these agencies’ actions in approving specific ARRPs and directing the contents thereof. *See,*
 16 *e.g.*, ECF 213; ECF 100 ¶396 (Claim II challenges “actions and orders of OMB, OPM, and
 17 DOGE … including *but not limited to*” the Memorandum, “*as well as any direction, approval, or*
 18 *requirement imposed with respect to any ARRPs* that result from that Executive Order, exceed
 19 OMB, OPM, and DOGE’s authority and are contrary to statute and therefore *ultra vires.*”)
 20 (emphases added); *id.* ¶¶404, 411 (similar, re: Claims III, IV, and V, asserting APA claims against
 21 OMB, OPM, and DOGE). Communications approving or disapproving ARRPs (in part or in
 22 whole, and informally or formally), discussing or clarifying the content of the proposals submitted
 23 to OMB/OPM for approval, and/or ordering specific cuts or deeper cuts are squarely at issue in
 24 these claims, and easily clear the “low bar” of relevance. *Pizzuto*, 136 F.4th at 868. These

25
 26
 27 ¹⁰ To the extent the Government seeks to revisit the question whether the OMB/OPM
 28 Memorandum is final agency action, ECF 210 at 13, that has already been resolved by this Court.
 ECF 124 at 42-43. In any event, that has no bearing on this discovery dispute because the requested
 documents are discoverable for claims other than the APA challenge to the Memorandum itself.

1 communications are also relevant to the APA claims against Federal Agency Defendants, for
 2 similar reasons that the ARRPs themselves are. For example, as this Court held, Plaintiffs' APA
 3 claim alleging arbitrary and capricious action by agencies requires Plaintiffs "to show that an
 4 agency has failed to consider an important aspect of a problem, that the agency offers an
 5 explanation for a decision that is contrary to the evidence, that the agency's decision is so
 6 implausible that it could not be ascribed to a difference in view or be the product of agency
 7 expertise, or that the agency's decision is contrary to governing law." ECF 214 at 5–6. Any
 8 communications in which an agency explains its ARRP while seeking approval, or in which OPM,
 9 OMB, or DOGE directs the timing, extent, or content of particular cuts (for explained or
 10 unexplained reasons), would clearly be relevant to that claim.

11 The Government tries to sidestep the plain relevance of these communications to Plaintiffs'
 12 claims by arguing that those claims are "foreclosed" and therefore fail on the merits after the
 13 Supreme Court's stay order. But again, and as this Court has now held, that is not the case. *See*
 14 ECF 214 at 4–5; *supra* at 5–8.

15 **B. Request No. 1 is properly directed at DOGE.**

16 Request No. 1 also properly encompasses communications to and from DOGE. The record
 17 evidence already contains agency admissions that DOGE instructed agencies to take certain actions
 18 including the extent to which agencies were to RIF employees. *Supra* n.6. DOGE was specifically
 19 tasked by the President with reducing the federal workforce,¹¹ and specifically tasked by
 20 OMB/OPM with working with the agencies on the content and scope of RIFs (ECF 37-1, App. B at
 21 2). Communications between DOGE and Federal Agency Defendants are likely to reveal the
 22 unlawful directives that DOGE imposed on agencies and the unlawful nature of the agencies'
 23 actions to implement those directives.

24 The Government makes three arguments. First, it contends that Request No. 1 is irrelevant
 25

26 ¹¹ See White House, Presidential Action, *Hiring Freeze* (Jan. 20, 2025) available at
 27 <https://www.whitehouse.gov/presidential-actions/2025/01/hiring-freeze/>; White House, *Fact Sheet: President Donald J. Trump Extends the Hiring Freeze* (April 17, 2025) ("President Trump established the 'Department of Government Efficiency' to examine how to streamline the Federal Government, eliminate unnecessary programs, and reduce bureaucratic inefficiency.").

1 and overbroad to the extent that it seeks communications between any Federal Agency Defendant
 2 and “Agency DOGE Teams.” ECF 210 at 12–14. The Government argues, based on its
 3 representation that Agency DOGE Teams comprise agency employees who report to leadership at
 4 Federal Agency Defendants, that such communications are intra-agency. However, Plaintiffs’
 5 Request does not seek such intra-agency communications. Instead, it seeks only communications
 6 between OMB, OPM, and DOGE and those Federal Agency Defendants.

7 In drafting these Requests, Plaintiffs defined DOGE in the way that the Government has
 8 been using the term. *E.g.*, ECF 60 at 2 n.1. Plaintiffs understand the Government is now
 9 confirming that communications by members of DOGE Teams embedded at agencies qualify as
 10 communications by Federal Agency Defendants, and therefore clarify, in light of that
 11 representation to this Court, that Plaintiffs’ Request encompasses communications between OMB
 12 and any embedded DOGE team member, OPM and any embedded DOGE team member, U.S.
 13 DOGE Services (USDS) and any embedded DOGE team member, and U.S. DOGE Service
 14 Temporary Organization and any embedded DOGE team member. Plaintiffs confirm, based on the
 15 Government’s representations, that this Request does not encompass communications within
 16 agencies (i.e., between members of DOGE who are embedded at Federal Agency Defendants and
 17 other employees of the same agency).¹²

18 Second, the Government argues that Request No. 1 improperly seeks communications
 19 between USDS and Federal Agency Defendants because, it argues, the Complaint does not allege
 20 that USDS was “involved” in the Memorandum or with the submission or approval of ARRPs.
 21 ECF 210 at 13. But that is incorrect; Plaintiffs do allege (and have submitted evidence) that
 22 DOGE, including USDS, was involved in giving direction to agencies regarding the actions
 23 included in these ARRPs, including by dictating to each agency the required cuts to staffing and
 24 programs. *E.g.*, ECF 100 ¶¶13, 15–16, 175, 233, 239, 241, 268, 282; *see also supra* Section I;

25
 26 ¹² Because the Government did not attempt to meet and confer on these objections prior to filing
 27 its motion, Plaintiffs had no prior opportunity to make these clarifications. In making these
 28 clarifications, Plaintiffs do not concede that intra-agency communications are irrelevant to Plaintiffs’
 claims. But Plaintiffs do not seek those communications at this time.

1 supra n.6. Communications between USDS and the agencies about these matters are plainly
 2 relevant.

3 Third, the Government says that it intends to argue in its motion to dismiss that USDS is
 4 not an agency under the APA. ECF 210 at 13. To start, whether USDS is an agency under the
 5 APA has no bearing on discovery regarding Plaintiffs' ultra vires claim against DOGE. Further,
 6 the fact that pending cases "rais[e] the question" whether DOGE is subject to FOIA or the APA,
 7 *id.*, provides no basis to conclude it is not. The APA applies broadly to any "authority of the
 8 Government of the United States," 5 U.S.C. §701(b)(1), and the argument that USDS does not
 9 qualify as such is meritless. *See AFL-CIO v. Dep't of Lab.*, No. CV 25-339 (JDB), 2025 WL
 10 1129227, at *22 n.19 (D.D.C. Apr. 16, 2025); *AFL-CIO v. Dep't of Lab.*, 766 F.Supp.3d 105, 111
 11 (D.D.C. 2025). Discovery regarding USDS's directives to agencies to cut staff and functions will
 12 only cement that conclusion.

13 **C. The communications sought by Request No. 1 are not categorically privileged,
 14 and the Government must produce a privilege log for any specific assertions.**

15 In response to the Court's direction that the Government "identify any categorical
 16 objections to production of documents responsive to plaintiffs' Request No. 1," the Government
 17 asserts that "it is highly likely that a significant volume of the materials Plaintiffs seek in RFP 1 are
 18 protected from disclosure by the deliberative process privilege." ECF 210 at 14. This argument
 19 misconstrues Plaintiffs' request and cannot support a blanket protective order forbidding discovery.

20 The Government objects that Request No. 1 seeks "[i]ntra-agency communications" which,
 21 it contends, include "discussions about plans, techniques, and strategies" that would be covered by
 22 the deliberative process privilege. ECF 210 at 15. But as noted, this Request does not seek *intra-*
 23 agency communications.

24 The Government does not argue that the *inter-agency* communications responsive to this
 25 Request are subject to this privilege. ECF 210 at 14–15. Even if the deliberative process privilege
 26 did apply to any such responsive communications, this Court has already recognized that the
 27 deliberative process privilege is qualified and can be overcome where a party's "need for the
 28 materials and the need for accurate fact-finding override the government's interest in non-

1 disclosure.” *F.T.C. v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); ECF 214 at 7–
 2 8. The communications between agencies and OMB, OPM, and DOGE discussing the ARRPs,
 3 including approvals or disapprovals of those ARRPs, are, like the ARRPs themselves, squarely at
 4 issue in this case. “There can be no doubt that under some circumstances, pre-decisional
 5 deliberative communications may go to the heart of the question of whether an agency action was
 6 arbitrary and capricious, an abuse of discretion or otherwise inconsistent with the law under
 7 Section 706(2) of the APA.” *Desert Survivors v. U.S. Dep’t of the Interior*, 231 F.Supp.3d 368,
 8 382–83 (N.D. Cal. 2017).

9 Given the centrality of this evidence to Plaintiffs’ claims and the other *Warner* factors
 10 weighing against application of the privilege, if the Court finds that the privilege applies at all to
 11 communications between agencies, it should require the Government to identify the specific
 12 documents they contend are privileged, so that they may be reviewed *in camera* or included in a
 13 privilege log. *See Desert Survivors*, 231 F.Supp.3d at 382–83 (ordering *in camera* review of
 14 assertedly privileged materials); *People of State of Cal. ex rel. Lockyer v. U.S. Dep’t of Agric.*, No.
 15 C05-03508 EDL, 2006 WL 708914, at *4 (N.D. Cal. Mar. 16, 2006) (“Defendants must make a
 16 specific showing establishing the application of a privilege for each document that it contends that
 17 it may withhold based on privilege.”).

18 **IV. Request Nos. 2 and 3 are relevant.**

19 Request Nos. 2 and 3 seek applications for waivers of statutorily mandated RIF notice
 20 periods and responses by OMB and OPM to those waiver requests. The Requests match two of the
 21 four categories of documents that the Court ordered produced in its TRO order. *See supra* n.2
 22 (explaining that Plaintiffs made these Requests in case this Court does not confirm that previously
 23 ordered discovery); ECF 85 at 40. Although the Government sought (and partially obtained)
 24 reconsideration of the Court’s production order as to the other two categories of documents, ECF
 25 88, 214, the Government has never before explained why the waiver requests and OMB/OPM’s
 26 responses to the waiver requests should not be produced, *see* ECF 96 at 9. Even now, the
 27 Government does not claim that those documents are privileged.

28 The Government’s only objection is relevance, and that objection is meritless. Plaintiffs

1 have established an adequate factual foundation to conclude that the information contained in the
 2 waiver requests and OMB/OPM's responses to those requests are likely relevant to showing the
 3 agencies' unlawful approach to cutting staff and programs. Pursuant to OPM's instructions,
 4 agencies must submit justifications for shortening the required time periods for the creation of
 5 competitive areas and providing notice to employees.¹³ Those explanations are directly relevant to
 6 this case. For example, the Department of Labor's April 2025 request for a waiver regarding its
 7 RIFs at the Office of Federal Contract Compliance Programs and OPM's response to that request,
 8 which are in the existing record, set forth as justification that the President eliminated the "statutory
 9 and regulatory foundation" for the office by an executive order "rendering the vast majority of
 10 functions within the agency unnecessary." ECF 70-2 at 22; *id.* at 24 (OPM approval citing same
 11 justification). A waiver request and response with respect to non-party National Endowment for
 12 the Humanities provides similar support. ECF 96-1 at 25–26, 29–30.

13 These documents would thus be part of the administrative record, and it was appropriate for
 14 the Court to order expedited production of these documents. Plaintiffs served Request Nos. 2 and 3
 15 to ensure prompt production of these documents, which the Court ordered produced in May and
 16 which the Government has never produced.

17 **V. Discovery is relevant to potential relief.**

18 Finally, the Government recasts its arguments on the merits of Plaintiffs' claims to argue
 19 that the discovery requests are "not even plausibly relevant to any relief the Court could grant in
 20 this case." ECF 210 at 16. But this argument fails for largely the same reasons addressed *supra*
 21 and in Plaintiffs' prior briefing.

22 First, the Government argues that the ARRPs and associated evidence cannot be reviewed
 23 at all by this Court, as they are not final agency action that could be enjoined. But both approved
 24

25 ¹³ See OPM, *Workforce Reshaping Operations Handbook*, at 32 (request to create competitive
 26 area with less than 90-days notice must include "A discussion of the circumstances that led to the
 27 proposed changes less than 90 days before a proposed reduction."); *id.* at 87–88 (request to shorten
 28 RIF notice period must include "The reasons why a shorter RIF notice period is needed."), available
 at https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force-rif-workforce_reshaping.pdf.

1 ARRPs and the Federal Agency Defendants' actions implementing them, including through
 2 issuance of large-scale RIF notices and placement of employees on administrative leave *en masse*,
 3 are final agency actions under the APA. *See ECF 213 at 5–6; U.S. Army Corps of Eng'rs v.*
 4 *Hawkes Co.*, 578 U.S. 590, 597 (2016); *Prutehi Litekyan: Save Ritidian v. United States Dep't of*
 5 *Airforce*, 128 F.4th 1089, 1108 (9th Cir. 2025) (final agency action is “interpreted in a pragmatic
 6 and flexible manner” that “focus[es] on the practical … effects of the agency action”). If
 7 OMB/OPM/DOGE decisions implementing the Executive Order are unlawful, or if approved
 8 agency ARRPs or their implementation are unlawful, then those actions could be stayed,
 9 preliminarily enjoined, or vacated in a final judgment by this Court. Moreover, the relevance
 10 standard for purposes of discovery is broad and is “construed liberally and with common sense.”
 11 *Neonode Smartphone LLC*, 2022 WL 1285429, at *1. That standard is easily satisfied here, as the
 12 communications (including the approvals themselves) and the waiver applications for planned RIFs
 13 are relevant to the challenged actions.

14 Second, the Government again contends that the Supreme Court’s stay order resolves this
 15 case in its entirety, such that Plaintiffs cannot challenge any particular agency reorganization or
 16 RIF plan. This argument fares no better on repetition than it did before. ECF 214 at 4; *supra*
 17 Section I.B.

18 In a final attempt to delay this discovery, the Government argues that Plaintiffs must wait
 19 for RIFs to actually occur, and then litigate that case on a future administrative record. ECF 210 at
 20 17. But the Government cites no authority, and the Government’s preference that Plaintiffs wait
 21 and bring a new case in the future does not preclude Plaintiffs’ present challenge to the
 22 Government’s acts that have already occurred or are impending. This Court has equitable authority
 23 to enjoin imminent action that is likely to cause irreparable injury and the authority granted by
 24 Congress to “issue all necessary and appropriate process to postpone the effective date of an
 25 agency action or to preserve status or rights pending conclusion of the review proceedings.” 5
 26 U.S.C. §705. Plaintiffs do not need to wait for further irreparable harm to occur before seeking or
 27 obtaining discovery, and this Court should reject this thinly veiled attempt to delay review of the
 28 lawfulness of the Government’s actions.

CONCLUSION

The Court should deny the Government's motion for a protective order and order quashing the requests for production.

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Respectfully submitted,

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